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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,192	09/18/2006	Min Seok Yoon	12109.0089USWO	7441
23552 7590 04/20/2009 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
ANDERSON, AMBER R				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
04/20/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/593,192

**Applicant(s)**

YOON, MIN SEOK

**Examiner**

AMBER R. ANDERSON

**Art Unit**

3765

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's amendment filed January 21, 2009 has been reviewed and considered. Claims 1-5 are currently pending and have been amended with respect to the prior art rejections raised in the non-final Office Action mailed July 21, 2008.

Applicant's First Argument: In sharp contrast, Okahashi first discloses the overall border (i.e., not a portion) of the impermeable layer is fixedly connected to the double layered sock.

Examiner's Response: The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See MPEP 2111.03. Therefore, the portion of attachment of the applicant's invention is encompassed by the portion of attachment disclosed by Okahashi plus any additional attached areas disclosed by Okahashi.

Applicant's Second Argument: Okahashi does not suggest relative sliding of the impermeable layer in relation to the double layered sock (e.g., to thereby help prevent calluses and blisters caused by friction).

Examiner's Response: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate

the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Abel (USPN 3,269,038).**

Regarding Claim 1, Abel discloses a heel protector comprising a body member made of a flexible fabric material for being worn on the feet (Col. 2, lines 7-12); and an inner pad member (15) coupled to an inside of the body member (Col. 2, lines 19-23) for a direct contact with a heel when the heel protector is worn (Fig. 1), wherein both distal ends of longitudinal direction of the inner pad member are coupled to the body member, and a portion of each lateral distal end of the inner pad member accommodated to both lateral sections of the heel is coupled to the body member (wherein the pad is sewn at the top and by being in contact with the sock is therefore coupled at all ends to the sock), such that the inner pad member being in contact with the heel can relatively slide

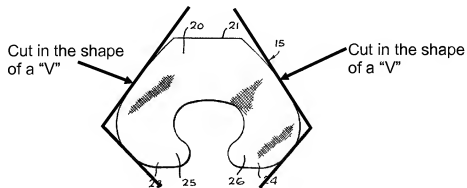
in relation to the body member when the heel protector is worn (wherein the pad is capable of moving relative to the sock).

Regarding Claim 2, Abel discloses wherein the body member has a cylindrically bent shape (Fig. 1-3).

Regarding Claim 3, Abel discloses wherein the inner pad member has a substantially oblong shape (Fig. 4).

Regarding Claim 4, Abel discloses wherein the inner pad member is cut in the shape of a "V" at both longitudinal central portions of edges thereof (Fig. 4). See the marked up figure below on Pg. 4 indicating the "cut in the shape of a V" portion.

Regarding Claim 5, Abel discloses wherein the body member is provided with an elastic band at least one of upper and lower distal ends thereof (Col. 2, lines 12-13).



***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **AMBER R. ANDERSON** whose telephone number is (571) 270-5281. The examiner can normally be reached on **Mon-Thur, 8am - 6pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AMBER R ANDERSON/  
Examiner, Art Unit 3765

April 15, 2009

/Gary L. Welch/  
Supervisory Patent Examiner, Art Unit 3765